



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 552

IN THE MATTER OF FRANK R. MAZZILLI

DISPOSITION AGREEMENT

The State Ethics Commission ("Commission") and Frank Mazzilli ("Mazzilli") enter into this Disposition Agreement ("Agreement") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On July 12, 1994, the Commission initiated, pursuant to G.L. c. 268B, §4(j), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Mazzilli. The Commission has concluded its inquiry and, on April 11, 1995, found reasonable cause to believe that Mazzilli violated G.L. c. 268A, §' 17 and 23(b)(2).

The Commission and Mazzilli now agree to the following findings of fact and conclusions of law:

1. Mazzilli was, during the time relevant, the Carver, Marion, Wareham Regional Landfill Committee ("Landfill Committee") chairman. As such, Mazzilli was a municipal employee as that term is defined in G.L. c. 268A, §1.

2. As of 1993, the Landfill Committee was operating a large landfill located in Carver, Massachusetts ("Landfill"). The Landfill served as a rubbish disposal site for the region. As of 1993, the Landfill Committee was basically in the process of closing the Landfill.

3. During the time relevant, Mazzilli owned a large piece of property in Carver located at 73 Main Street off Route 58.

4. As of May/June, 1993, Mazzilli was leasing space on that property to Phillip LaMarca. LaMarca was operating a tire recycling business.^{1/} By this time, because of various mechanical and financial difficulties, a huge number of tires, approximately 25,000, shredded and otherwise, had accumulated on the site. One of LaMarca's primary difficulties was finding a landfill that would accept the shredded tires at a price he could afford.

5. The volume and nature of the tire material was such that in early 1993 the Carver fire chief began pressing LaMarca to have them removed; however, as the owner of the site, Mazzilli was ultimately responsible for their removal.

6. Energy Answers Corporations Operators, Inc. ("EACO") provides various operational services at landfills. As of May 1993, EACO had a contract with the Landfill Committee to accept demolition debris to help raise revenues to pay for the close of the Landfill.^{2/}

7. EACO employed William Bigelow III ("Bigelow") as its site supervisor at the Landfill. He was responsible for the day-to-day operation of the Landfill.

8. In or about late May or early June, 1993, Mazzilli contacted Bigelow regarding the tires. Mazzilli explained that LaMarca was Mazzilli's tenant and needed a place where he could dump shredded tires. Mazzilli asked Bigelow to accept the tires. Bigelow agreed.^{3/}

9. While EACO usually charged anywhere from \$25 to \$45 per ton for debris, EACO gave LaMarca a price of \$15 per ton. According to the testimony of Howland and Bigelow, EACO did this because it could use the shredded tires as road base. In other words, the shredded materials were not debris, but rather could be used in lieu of something which EACO would have to otherwise pay for, such as gravel or other suitable fill materials.

10. Between May 1993 and July, 1993, LaMarca dumped approximately 880 tons of tires, for which he paid \$13,224 in fees. Apparently, only 250 to 500 tons of this material could be used as road base. The rest were treated as regular debris. (Nevertheless, LaMarca only paid \$15 per ton for all this dumping.)

11. At various points while LaMarca was dumping as described above, he had difficulty paying for the dumping fees. On several such occasions, Mazzilli assured EACO that the bills would be paid. Consequently, EACO continued to allow LaMarca to dump notwithstanding those financial difficulties.

12. At some point in or about late June 1993, Bigelow concluded that EACO had accepted all the tires it could use for road fill. He did not want to accept any more tires for this purpose. He communicated this to LaMarca and Mazzilli. Mazzilli, however, asked Bigelow to continue accepting shredded tires for road fill. After Bigelow consulted with his superiors, EACO decided to continue accepting the materials. Eventually, at some point in or about July 1993, Bigelow and his superiors concluded that the Landfill could accept no more tire material at road fill rates and so communicated that to LaMarca. Thereafter, the Landfill accepted no more such tires at the \$15 rate.

13. LaMarca could not afford to dump the tires at the regular debris rate. He could find nowhere else to dump the tires at a price he could afford. Consequently, he stopped doing business as a tire recycler, leaving a large inventory of used or shredded tires on Mazzilli's property.

14. Mazzilli eventually paid for the cost of removing these tires himself. The cost was approximately \$50,000.

15. Section 17(c) of the Conflict of Interest Law, G.L. c. 268A, prohibits a municipal employee from acting as agent for anyone other than the municipality in relation to a particular matter in which the municipality has a direct and substantial interest.

16. The contract between the Landfill Committee and EACO was a particular matter.^{4/}

17. The Landfill Committee had an obvious direct and substantial interest in that contract both because it was responsible for the proper closing of the Landfill and because it had an interest in a portion of the dumping fees generated.

18. Mazzilli acted as LaMarca's agent in introducing LaMarca to Bigelow, asking Bigelow to accept LaMarca's tires at their first meeting, and thereafter on at least one occasion asking Bigelow to accept more tires.

19. These actions were in relation to the Landfill Committee/EACO contract because (1) they involved material which would be placed into the Landfill, and, therefore, these actions could affect the proper closing of the Landfill under the contract; and, (2) because the material was not characterized as debris, these actions affected the Landfill Committee's portion of the dumping fees under the contract.

20. Therefore, by acting as LaMarca's agent in relation to a contract in which the Landfill Committee had a direct and substantial interest, while being a municipal employee as a member of the Landfill Committee, Mazzilli violated §17(c) on numerous occasions as described above.

21. Section 23(b)(2) prohibits a municipal employee from using or attempting to use his official position to secure an unwarranted privilege of substantial value for anyone not properly available to similarly situated people.

22. By introducing LaMarca to Bigelow, by asking Bigelow to accept the tires, and by on at least one occasion asking Bigelow to continue accepting the tires at the reduced \$15 rate, Mazzilli, as the Landfill Committee chair, put Bigelow in an implicitly pressured situation such that Bigelow would be strongly compelled to grant those accommodations to LaMarca. Such requests under such circumstances involve the use of public position for an unwarranted privilege.^{5/}

23. The privilege was clearly of substantial value because the rate LaMarca was paying was considerably below the market rate for debris.^{6/}

24. Therefore, by introducing LaMarca to Bigelow, by asking him to accept the tires, and by on at least one occasion asking Bigelow to continue accepting LaMarca's tires, Mazzilli used his public position to secure unwarranted privileges of substantial value for LaMarca, thereby violating §23(b)(2).^{7/}

In view of the foregoing violations of G.L. c. 268A by Mazzilli, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Mazzilli:

(1) that Mazzilli pay to the Commission the sum of seven thousand five hundred dollars (\$7,500.00) as a civil penalty for violating G.L. c. 268A, §17(c) and 23(b)(2) in his dealings with Bigelow;^{8/} and

(2) that Mazzilli waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: May 2, 1996

^{1/} Basically, LaMarca would accept used tires for a small fee, shred them, and then dispose of them at various landfills in the area. He would make a profit if the fees he charged exceeded the fees he paid the landfills.

^{2/} Pursuant to this contract, the Landfill Committee was to receive a certain portion of the dumping fees for debris.

^{3/} Bigelow discussed Mazzilli's request with his (Bigelow's) supervisor at EACO, Eban Howland.

^{4/} "Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

^{5/} The Commission has made clear that a public official may not solicit people he regulates for private commercial accommodations. The reason for this prohibition is that the regulatee is an inherently exploitable position vis-a-vis the regulator.

^{6/} Even if the road base rate was reasonable, the original decision by EACO to accept the tires as "road base" as opposed to debris was itself a decision worth thousands of dollars to LaMarca. While the decision may have been justified on the merits, namely that the materials could, in fact, be used for road base, the decision was made under inherently strained circumstances. In any event, the evidence makes clear that at some point during the summer of 1993 Bigelow continued to accept the tires at the reduced rate even though they no longer could be used as road base. In that respect, the accommodation was certainly of substantial value. Thus, where between 380 to 630 tons of tires should have been charged the normal rate of \$25 to \$45 per ton, LaMarca saved \$10 to \$30 per ton, or a total of between \$3,800 and \$18,900.

^{7/} In effect, Mazzilli was also securing an unwarranted privilege for himself as well because as the property owner he was ultimately responsible for disposing of the tires.

^{8/} Included in this \$7,500 penalty is the recognition that Mazzilli personally benefitted by having these tires removed from his property.